

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission (the “Commission”), under the authority vested in it under the Political Reform Act (the “Act”)¹ by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Commission will consider the proposed regulation at a public hearing on or after **October 14, 2010**, at the offices of the Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, California, commencing at approximately **10:00 a.m.** Written comments must be received at the Commission offices no later than **5:00 p.m.** on **October 12, 2010**.

BACKGROUND/OVERVIEW:

Responding to the increasing use of the Internet and new media by campaigns to reach voters, the FPPC created a Subcommittee on Internet Political Activity, led by Commissioners Elizabeth Garrett and Timothy A. Hodson. These Commissioners, joined by Commissioner Lynn Montgomery, held hearings in Sacramento and Los Angeles to gather information and determine whether technological developments in campaigning require changes in the Act and Commission regulations. Commissioners Garrett and Hodson prepared the Subcommittee’s report and recommendations on “Internet Political Activity and the Political Reform Act” which was presented at the August 12, 2010, Commission meeting. The report is available on the FPPC’s website: <http://www.fppc.ca.gov/agendas/08-10/SubCommReport.pdf>.

The Report recommends numerous ways to update the Commission’s regulations to address internet political communications and ensure that paid political communications on the Internet are being properly disclosed. At the August 12, 2010, meeting, the Commission directed staff to begin implementing these recommendations. The Commission will consider regulations stemming from the Subcommittee’s report at upcoming meetings. The first proposed regulations that are part of this project are exceptions to the definitions of contribution and expenditure in Regulations 18215, 18225, and new 18215.2, described below. In addition, the proposed regulations include those that define advertisement disclosure, contents of disclosure statements, and rules regarding amended advertising disclosure in Regulations 18450.1, 18450.4, and 18450.5.

REGULATORY ACTION:

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

Amend 2 Cal. Code Regs. § 18215. Contribution:

The proposed regulatory action updates the exception to the definition of contribution in Regulation 18215(c)(8) to cover online media. The current exception provides that the cost of a news story or a television news broadcast about a candidate or measure will not count as a contribution to the candidate or measure. The Subcommittee Report recommended that “the PRA’s media exemption should be interpreted to include online media sources, whether or not they also participate in print or broadcast media.” (p. 18.) Proposed language for the updated media exemption may draw on the federal regulation at 11 CFR 100.73 and 100.132. In addition, new language clarifies that the media exemption generally does not apply if the newspaper or facility is owned by candidate or committee. Addition of this language would assist Commission enforcement efforts, as the agency has had a number of cases involving “newspapers” started by candidates close to an election.

The Subcommittee Report also recommends clarifying that online candidate information sites do not count as a “contribution” to a candidate if they are nonpartisan voter education sites providing information about various candidates or measures. “As more Californians vote at home, the information they receive from the Internet – from government sources, nonprofit groups and other sources of voter information – can provide valuable cues and information at the time they cast their ballot, as well as serve as sources of information before they go to the polls.” (p. 19.) An additional exception to the definition of contribution is proposed to implement this recommendation.

Adopt 2 Cal. Code Regs. § 18215.2. Uncompensated Internet Activity by Individuals that is not a Contribution or Expenditure:

The Subcommittee Report on Internet Political Activity and the PRA recommended that the value of uncompensated Internet political activity by individuals should not be included in the definitions of “contribution” or “expenditure.” The report stated that: “The Commission should adopt, through regulation, a clear exemption that applies to individuals who act without the consent or knowledge of a political committee and who do not trigger the \$1,000 expenditure threshold. This will clarify that an individual’s sending or forwarding emails, linking to a website, or establishing and maintaining a website does not result in a contribution or expenditure under the PRA. Sending emails about political campaigns, when done by individuals who are uncompensated, should not trigger regulation and should be considered of nominal value. . . . Finally, the value of computers and other equipment owned by the producer of such speech should not be considered in determining the amount of political expenditures made with respect to a communication.” (p. 18.) Proposed Regulation 18215.2 creates this express exemption for an uncompensated individual’s internet activity.

The regulation distinguishes other activity that is not within the exception for individual grassroots internet activity. The regulation specifically states that advertisements placed by a political committee for a fee online *do* count as a “contribution or expenditure.” In addition, the regulation states that purchasing or renting an email list at the direction of a political committee counts as a contribution or expenditure. The proposed language draws from the FEC’s rule on uncompensated internet activity by individuals at 11 CFR 100.94 and 11 CFR 100.155.

In addition, the Subcommittee Report recommends that bloggers not be specifically regulated at this time, but that the activities of bloggers writing about a candidate or measure would be deemed to fit either under the exemption for uncompensated internet activity by individuals or under the media exemption from the definitions of “contribution” and “expenditure.” This approach to the treatment of bloggers follows that of the Federal Election Commission. The Subcommittee Report recommends that payments from political committees for internet blogging should be disclosed in more detail in expenditure reports; the reporting recommendation will be implemented in a separate upcoming rulemaking.

Amend 2 Cal. Code Regs. § 18225. Expenditure:

The expenditure regulation contains an exemption from the definition of “expenditure” for a news story or broadcast on a candidate, mirroring the exemption from the definition of “contribution.” The Commission will consider including online media in this exemption from the definition of expenditure. The proposed language is parallel to the media exemption language in the contribution regulation, discussed above, and is drawn from the federal regulation at 11 CFR 100.73 and 100.132.

Amend 2 Cal. Code Regs. § 18450.1. Definitions. Advertisement Disclosure.:

This proposed amendment updates the definition of advertisement in Regulation 18450.1 to include electronic media advertisements. The current definition in Regulation 18450.1(b)(3) excludes “a web-based or Internet-based communication.” It includes communications described in Section 84501(a) that are placed in “a newspaper, periodical, magazine of general circulation” or “a telephone, or facsimile message that is not solicited by the recipient and is intended for delivery in substantially similar form to 200 or more households...”

The Subcommittee Report recommended that “If the PRA and regulations require disclosure on paid political communications that are printed or broadcast, then similar paid communications that are disseminated over the Internet should be accompanied by similar disclosures.”

The proposed language applies advertisement definition and advertisement disclosure rules to “broadcast, print or electronic media,” as well as to an “electronic message” that is intended for delivery in substantially similar form to 200 or more households.

Amend 2 Cal. Code Regs. § 18450.4. Contents of Disclosure Statements.
Advertisement Disclosure.:

This proposed amendment follows the Subcommittee Report recommendations to apply existing disclosure rules to electronic advertisements. It applies requirements of advertising disclosure statements under Regulation 18450.4 to “electronic communications.”

Regulation 18450.4(b)(3)(G) sets up specific requirements for online advertising disclosure statements, which includes the World Wide Web address of the person or political committee that paid for the communication. The proposed regulation also requires, and sets

standards for, what is considered “clear and conspicuous” disclosure. The requirements include minimum disclosure size, display time, and color contrast requirements.

The proposed language is in part based on the FEC’s rule on advertising disclaimers as applied to broadcast advertising at 11 CFR 110.11.

Amend 2 Cal. Code Regs. § 18450.5. Amended Advertising Disclosure:

This proposed amendment follows the Subcommittee Report recommendations to apply existing PRA regulations on print and broadcast paid communications to electronic paid communications. The proposed regulatory action would extend the PRA’s advertising disclosure amendment requirements for broadcast advertisements to electronic communications. Under the proposed changes, electronic advertisement disclosures “must be amended within five calendar days after a new person qualifies as a disclosable contributor (under Sections 84503 or 84506) or a committee’s name changes (pursuant to Section 84504, or Regulations 18402 and 18450.3).”

SCOPE: The Commission may delete provisions, adopt the language noticed herein, or choose new language to implement its policy. The Commission may make other changes or additions to these regulations related to advertising disclosure, internet political activity, or electronic communications.

FISCAL IMPACT STATEMENT:

Fiscal Impact on Local Government. This regulation will have no fiscal impact on any local entity or program.

Fiscal Impact on State Government. This regulation will have no fiscal impact on any state entity or program.

Fiscal Impact on Federal Funding of State Programs. This regulation will have no fiscal impact on the federal funding of any state program or entity.

AUTHORITY: Government Code Section 83112 provides that the Fair Political Practices Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Political Reform Act.

REFERENCE: The purpose of these regulations is to implement, interpret, and make specific Government Code Sections 82015, 82025, 84501, 84502, 84503, 84504, 84506, 84506.5, 84509.

CONTACT: Any inquiries should be made to staff counsels Emelyn Rodriguez or Hyla Wagner Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, CA 95814; telephone (916) 322-5660 or 1-866-ASK-FPPC. Proposed regulatory language can be accessed at <http://www.fppc.ca.gov/index.php?id=247#2>.